



April 17, 2009

City Attorney; Glen Schwarzbach
City Project Manager: Gabrielle Wilder
City of San Jose
City Hall, 200 E. Santa Clara St.
San Jose, CA 95113

Reference: Fleming Park Project
City of San Jose

Ladies and Gentlemen:

Mrs. Wilder; thank you for forwarding Goodland a copy of the Jos. J. Albanese, Inc. (JJA) response to our protest letter on the Fleming Park Project. JJA response clarifies many of our original concerns. Mr. Stanley spends much of his time focusing on the licensing and certification issues we raised. Note that all four of the resilient surface bidders are specialty license holders. This is what we have seen for 15 years of park construction as it relates to resilient surfacing. Goodland is very familiar with the extent of which our "A" license allows us to perform certain specialty park construction tasks. If JJA is qualified to self perform and had found pre-bid a surfacing manufacturer that would allow JJA to install their material so as to keep the manufacturers warranty in place I suppose they could take the chance as they may have that the City of San Jose would allow this.

What's curiously missing from their response letter however is what manufacturer had or has agreed to work along with JJA in the fashion described in their letter? The City has no way of even knowing what product JJA is using or is qualified to install given the manufacturers possible certification and insurance requirements. Goodland believes it is incumbent on the City to research this scenario as described in the JJA response letter. Goodland has researched this issue and has been in contact with Stacey Midura of Sport Service Specialties in New York and Alex Tsitovich of the Robertson Tot Turf in Arizona both of whom were contacted by JJA after our protest letter was submitted on April 8th. Both of whom are the suggested manufacturers and installers listed in the City of San Jose Fleming Park Specifications 10-15.8. Mr. Tsitovich who we have worked with in the past explained to JJA that unless Robertson performed the installation of their material there would be no warranty of their product. This had always been our experience regardless of who the manufacturer is. Stacey Midura had a completely different explanation of what had transpired AFTER THE BID. Stacey confirmed that they had provided no pre-bid proposals for just material and supervision costs. She was contacted by JJA post bid and was asked if the Sport Surface Specialties (SSS) would sell the materials directly to JJA. SSS agreed they could do so and would supply TWO supervisors from their firm to assist JJA in the installation of their product. This apparently would satisfy the manufacture warranty and insurance issues. Why two supervisors were needed was curious but she explained they would be on JJA payroll. All of this is supported by the JJA response letter.

The problem with this approach and all the post bid effort to circumvent section 4100 of the Public Contract Code regarding Sub-Contractor listing is that none of the other General Contractors bidding this project knew that this was an option given the Sport Surface Specialties quote you are in possession of. Their quote pre-bid is clear to supply and install the resilient surface with their own forces. The city specifications should have explained that this was an

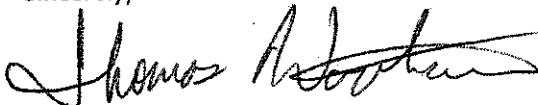
alternative option. This approach is where JJA is clearly receiving an economical advantage. Post bid JJA has approached the two specified resilient surface companies "shopping" because of a fatal "Material Defect" in their Bid Proposal and is now suggesting to the City that they will be getting on the job training for performing the installation of a material they have apparently never worked with. The resilient surface company SSS is happy to accommodate JJA because the sale is apparently all their interested in. We spoke to David Adams the day after we submitted our protest letter. David is the local sales representative for SSS and he was upset that we chose not to list him. None of the other bidders had this as an option clearly giving JJA an unfair bidding advantage.

Now given the fact that JJA miss-calculated their bid form total on the base bid by \$10,000.00 it only leaves about \$4000.00 between Goodland's Bid and that of JJA. This issue is the difference in the two low bids and it appears JJA forgot to insert the cost of the resilient surfacing in line item 15 and is scrambling to rectify the problem in a way we have not seen before. If the City knew Sport Surface Specialties would, as an alternative offer to supply material and coach an inexperienced contractor into placing the resilient surfacing it should have made that clear prior to bid time so that all bidders have that as an option. Goodland attempted to secure a material quote from SSS for this project on April 16, 2009 and they refused to supply us with that quote. We're supplying the city with the copy of their response. Stacey originally agreed to send us the copy of their quote to JJA for services supplied and performed; the attached quote was what we received. If SSS is allowed to treat JJA differently than 15 other bidders it clearly leaves the possibility as in this case of an unfair bidding advantage for JJA and apparently a guarantee that SSS would get the sale of their product.

In closing the City is the ultimate arbiter for all Bid Proposals. The language in the specifications is clear that the City has the right to reject any or all bids. It is important however that the integrity of the bidding process is consistent and fair leaving no doubt that the interest of all involved has been treated fairly and that all the Public Contract Laws applicable have been followed. Goodland trusts that after reviewing the issues as stated there can be no other decision but that the JJA Bid Proposal is non-responsive. Goodland is the lowest responsive bidder and should be awarded the Fleming Park Project. If the City chooses to award the Fleming Park Project to JJA Goodland would like to know when the City Council will meet on this matter for award so that we can present the case as we have explained it in the public forum.

Should you require additional information or assistance regarding this matter, please contact the undersigned at 209-321-2642.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas R. Wortham", written in a cursive style.

Thomas R. Wortham
Vice President

cc: John W. Busby, Attorney at Law

F A X

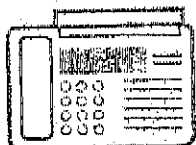
SPORT SURFACE SPECIALTIES

PO Box 577

EAST AURORA, NY 14052

716-652-2039

716-805-1001 FAX



To: Robert

Fax Number: 209-835-9554

From: SPORT SURFACE SPECIALTIES

Fax Number: 716-805-1001

Date: 4/16/2009

Regarding:

Fleming Park

Phone Number for Follow-Up:

716-652-2039

Comments:

PAGES INCLUDING THE COVER SHEET- 1

Sorry-We are unable to provide you with a quote at this time.

STACEY MIDURA